

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

|                                |   |  |
|--------------------------------|---|--|
| MORRISON ENTERPRISES, LLC, and | ) | 4:08CV3142                               |
| CITY OF HASTINGS, Nebraska,    | ) |  |
|                                | ) |  |
| Plaintiffs,                    | ) | MEMORANDUM AND ORDER ON                  |
|                                | ) | “DEFENDANT DRAVO                         |
| v.                             | ) | CORPORATION’S REQUEST FOR THE            |
|                                | ) | COURT TO TAKE JUDICIAL NOTICE OF         |
|                                | ) | THE UNITED STATES’ AMICUS CURIAE         |
| DRAVO CORPORATION,             | ) | MEMORANDUM FILED IN <u>ITT</u>           |
|                                | ) | <u>INDUSTRIES, INC. V. BORGWARNER,</u>   |
| Defendant.                     | ) | <u>INC.</u> IN SUPPORT OF ITS MOTION FOR |
|                                | ) | SUMMARY JUDGMENT RELATED TO              |
|                                | ) | PLAINTIFF’S WELL D CLAIMS”               |

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On September 15, 2009, Dravo Corporation (Dravo) filed a “Request for the Court to Take Judicial Notice of the United States’ Amicus Curiae Memorandum Filed in ITT Industries, Inc. v. Borgwarner, Inc. in Support of its Motion for Summary Judgment Related to Plaintiffs’ Well D Claims.” (Filing 304.) In response, Morrison Enterprises, LLC (Morrison) states that it does not dispute the legal position put forward in the United States’ amicus brief; it argues, however, that Dravo’s request should be denied because the facts of ITT Industries are distinguishable from those of the instant case. (See filing 327 at 2.)

I shall consider the amicus brief cited by Dravo as I analyze its motion for summary judgment on the plaintiff’s claims related to the Well D System. (See filing 154.) To that extent,

**IT IS ORDERED** that Dravo’s request for the court to take judicial notice of the United States’ amicus curiae memorandum in ITT Industries, Inc. v. Borgwarner, Inc., filing 304, is granted.

Dated November 9, 2009.

BY THE COURT

s/ Warren K. Urbom  
United States Senior District Judge